IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

FAO.No. 107 of 2005()

AGAINST THE ORDER IN IA 175 2003 IN
OS.25/2002 of WAKF TRIBUNAL, KOZHIKODE
.....

APPELLANT/PETITIONER

V.D.DEVASSIA, S/O.VATTATHARA DEVASSIA,
RESIDING AT CHANGORATH AMSOM,
ADAVUDUKKA DESOM, KOYILANDI TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:

DARUSSALAM MADRASSA COMMITTEE,
REPRESENTED BY PRESIDENT, MUTHAVALLI
NOOPPATTA MUHAMMADALI HAJI, AYANCHERI AMSOM
DESOM, KOZHIKODE.

BY ADV. SRI.S.KRISHNA IYER

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & T.R.RAMACHANDRAN NAIR,JJ.

F.A.O.No.107 of 2005

Dated this the 5th day of July, 2007

JUDGMENT

Kurian Joseph,J.

This appeal is filed against the order dated 18-4-2005 in I.A.No.175/2003 in O.S.No.25/2002 on the file of the Wakf Tribunal, Kozhikode. Appellant is the defendant in the suit filed for eviction and arrears of rent. It is the contention of the appellant that he is not the tenant of the building in question. He had surrendered the leasehold right to the original landlord Swarnalatha as per a release deed. It is submitted that thereafter she had leased out the premises to another person by a registered lease deed and the said person namely, Kuriakose was in possession of the property. It is in the meanwhile only the property was transferred to the respondent. It is submitted that the appellant was not aware of the proceedings pending before the Wakf Tribunal and as soon as he came to know of the same he filed a petition to condone the delay in filing the petition to set aside the ex parte decree and a petition to set aside the

ex parte decree. By the impugned order both the petitions were dismissed finding that there is no merit in the contentions. Despite service of notice there is no appearance. The appeal is pending since last two years. After having extensively heard counsel for the appellant and having gone through the materials before us we are of the view that it is only in the interests of justice that an opportunity is given to the appellant to contest the matter on merits. Accordingly we allow the appeal, set aside the common order in I.A.Nos.174/2003 and 175/2003 in O.S.No.25/2002 on the file of the Wakf Tribunal, Kozhikode. The said applications are allowed. The parties will appear before the Wakf Tribunal on 20-8-2007.

A copy of this judgment will be transmitted to the Wakf Tribunal, Kozhikode immediately.

(KURIAN JOSEPH, JUDGE)

(T.R.RAMACHANDRAN NAIR, JUDGE)

ahg.